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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,271	09/03/2002	Thomas Niehr	F-7322	5161
28107	7580	04/15/2005	EXAMINER	
JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168			CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/089,271

Applicant(s)

NIEHR ET AL.

Examiner

MONZER R. CHORBAJI

Art Unit

1744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-20 and 22-31.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

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Continuation of 11. does NOT place the application in condition for allowance because: The amendment to the claims presents them in better form for purposes of appeal but not for allowance.

On page 16 of the Remarks section, applicant argues that, "The reference makes absolutely no mention of sterilizing plastic containers, nor does the reference provide any recognition of the damage that the temperatures utilized in the processes set forth could inflict upon temperature sensitive plastics." As mentioned on pages 3-4 of the action dated 11/30/2004, the Vokins reference discloses a generic method for sterilizing all different types of containers (col. 1, lines 4-7) without excluding plastic ones and without being only applicable to a certain types of materials that make up such containers.

On page 18 of the Remarks section, applicant argues that, "This is in contrast to the claimed invention where a heated aerosol is introduced into the bottles to form a condensation film which is only subsequently vaporized." The examiner disagrees. Both the instant claims and the Vokin reference heat the hydrogen peroxide aerosol before entering the containers where a condensation layer is formed (col. 2, lines 50-53) then air heated at higher temperature is blown into the containers (col. 4, lines 40-44). With respect to blowing hydrogen peroxide at a starting temperature of about 60 to 90 degrees Celsius, the Dronet reference discloses such a feature. See page 5 of the action dated 11/30/2004.

On page 19 of the Remarks section, applicant argues that, "Inadvertent formation of droplets by a vapor does not induce one to purposefully form a condensation film from an aerosol." The Vokins reference like the instant claims teaches that the starting temperature is sufficient enough to produce a peroxide droplets or condensation film on the inner walls of the containers. The Vokins reference like the instant claims teaches removing any residual hydrogen peroxide. The fact that the Vokins reference is silent with regard to the droplets does constitute an inadvertent formation of droplets of hydrogen peroxide vapor.

On page 21 of the Remarks section, applicant argues that, "The Palaniappan teaching is to totally avoid condensation on the containers and place the containers in an environment where such condensation is impossible." The Palaniappan reference is combined with the Vokins reference for the specific teaching of sterilizing plastic containers and for the subsequent repeated application of heated sterile air and not for forming condensation layer within the containers or not for its temperature ranges. The condensation feature is taught in the Vokins reference. The Dronet reference and the Reinecke reference teach the temperature ranges recited in the instant claims.

Continuation of 13. Other: The 112 first paragraph rejection cited in the action dated 11/30/2004 has been withdrawn..


JOHN KIM
SUPERVISORY PATENT EXAMINER